IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

Patent Application

Inventors: Steven Phillip Gologorsky et al.

Serial No.:   10/676284

Conf. No.:   7073

Filing Date: 10/01/2003

Art Unit: 3692

Examiner: Kito Robinson

Docket No.: 620-022US

Title: Multi-variable computer-based auctions

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

Respectfully,
Steven Phillip Gologorsky et al.

By **/Jason Paul DeMont/**
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Dear Sir:

PRE-APPEAL BRIEF REMARKS

> **Note to the Pre-Appeal Conference Committee — The ideas taught by the references aren't even close to the present invention as claimed. Not in the ballpark.**
>
> **Furthermore, this is the second appeal from a final rejection. The applicants won the first appeal from the first final rejection, and, respectfully, are frustrated with the lack of progress in this application.**
>
> **Therefore, the applicants respectfully request that the Office consider these remarks and pass the application to issue.**

35 U.S.C. 103 Rejection of Claims 1-3, 5, 10, and 20

Claims 1-3, 5, 10, and 20 have been rejected under 35 U.S.C. 103(a) as unpatentable over R.S. Nieboer et al., U.S. Patent 6,518,419 (hereinafter "Nieboer") in view of by H.M. Abdou, U.S. Patent Application Publication 2002/0107773 A1 (hereinafter "Abdou"). The applicants respectfully traverse the rejection.

Claim 1, as amended, recites:

> **1.** A method of conducting an auction in behalf of an auction solicitor, the method comprising:
>
> **_publishing_** from a data processing system a relationship between a first auction variable that is a bid variable and a second auction variable that is not a bid variable; and
>
> selecting at the data processing system a winning bid in the auction, wherein the selection of the **_winning bid_** is **_dependent_** on the first auction variable and **_independent_** of the second auction variable;
>
> wherein the first auction variable and the second auction variable become **_contract_** terms of a contract that results from the auction; and
>
> wherein the value of the second auction variable in the contract is based on the value of the first auction variable in the contract and the **_relationship_** between the first auction variable and the second auction variable.
>
> (**_emphasis supplied_**)

Nowhere does Nieboer nor Abdou teach or suggest, alone or in combination, what claim 1 recites — namely,

→ publishing a relationship between a first **bid** variable and a second **nonbid** variable, and

→ selecting a winning bid that is **dependent** on the first auction variable but **independent** of the second auction variable, and

→ wherein the first auction variable and the second auction variable become **contract terms** of a contract that result from the auction.

For this reason, the applicants respectfully submit that the rejection of claim 1 is traversed.

Because claims 2, 3, 5, and 10 depend on claim 1, the applicants respectfully submit that the rejection of them is also traversed.

Claim 20 depends on independent claim 11, and the Office agrees that claim 11 is patentable over Neibor and Abdou. Therefore, the applicants respectfully submit that the rejection of claim 20 is traversed.

With respect to claim 4, Aggarwal fails to cure the deficiences of Nieboer and Abdou with respect to claim 1. Therefore, the applicants respectfully submit that the rejection of claim 4 is traversed.

With respect to claims 6-8, Williams fails to cure the deficiences of Nieboer and Abdou with respect to claim 1. Therefore, the applicants respectfully submit that the rejection of claims 6-8 is traversed.

With respect to claim 9, <u>Business Wire</u> fails to cure the deficiencies of Nieboer and Abdou with respect to claim 1. Therefore, the applicants respectfully submit that the rejection of claim 9 is traversed.

35 U.S.C. 103 Rejection of Claims 11-13 and 19-20

Claim 11 has been rejected under 35 U.S.C. 103(a) as being unpatentable over by Nieboer and Abdou in view of S.E. Kinney et al., U.S. Patent 6,871,191 (hereinafter "Kinney"). The applicants respectfully traverse.

Independent claim 11, as amended, recites:

> **11.** A method of conducting an auction in behalf of an auction solicitor, the method comprising:
>
> publishing from a data processing system a relationship between a first auction variable that is a bid variable and a second auction variable that is not a bid variable, ***wherein the relationship is such that a change in the first auction variable in a direction that is favorable to the auction solicitor induces a change in the second auction variable in a direction that is favorable to a bidder***; and
>
> selecting at the data processing system a winning bid in the auction based on the first auction variable and independent of the second auction variable;
>
> wherein the first auction variable and the second auction variable become contract terms of a contract that results from the auction; and
>
> wherein the value of the second auction variable in the contract is based on the value of the first auction variable in the contract and the relationship between the first auction variable and the second auction variable.
>
> (***emphasis supplied***)

Nowhere do Nieboer nor Abdou nor Kinney, alone or in combination, teach or suggest what claim 11 recites — namely, the relationship between the first auction variable and the second auction variable is such that ***a change in the first auction variable in a direction that is favorable to the auction solicitor induces a change in the second auction variable in a direction that is favorable to a bidder***.

Kinney teaches a plurality of bidders in an auction, each of which can offer a different quantity of a good at a different price, and the Office incorrectly equates the price and quantity terms of Kinney with the first auction variable and the second auction variable. This is incorrect for two reasons.

First, in Kinney the data processing system does not publish a relationship between price and quantity that become contract terms in a contract that results from the auction

Second, in Kinney the winner of the auction is based on both price <u>and</u> quantity, but as recited in claim 11, the winner is based on the first auction variable but is independent of the second auction variable.

For these reasons, the applicants respectfully submit that the rejection of claim 11 is traversed.

Because claims 12-13 and 19-20 depend on claim 11, the applicants respectfully submit that the rejection of them is also traversed.

With respect to claims 15-17, Williams fails to cure the deficiences of Niebor and Abdou and Kinney with respect to claim 11. Therefore, the applicants respectfully submit that the rejection of claims 15-17 is traversed.

With respet to claim 18, <u>Business Wire</u> fails to cure the deficiences of Niebor and Abdou and Kinney with respect to claim 11. Therefore, the applicants respectfully submit that the rejection of claim 18 is traversed.

Respectfully,
Steven Phillip Gologorsky et al.

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